IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.1291 OF OF 2005

M/s.Hindistan Platinum Pvt. Ltd. ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.V.Sridharan, Parkash Shah with R. Nambirajan i/b. D.S.K. Legal for petitioner.

Mr.H.V.Mehta with Mrs.S.V.Bharucha for respondents.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 4TH APRIL, 2005.

P.C. :-

1. Rule, returnable forthwith. Matter is taken up for final hearing by consent of the parties.

2. The Tribunal, while considering the prayer for waiver of the pre-deposit of duty and penalty,has made the observations to the effect that the issues raised are debatable on the question of marketability as well as on the question of limitation. In view of this prima facie finding, the petitioner contend that this is a fit case to grant total waiver so far as pre-deposit is concerned. The learned counsel appearing for the petitioner pointed out that marketability of the product referred to by the authorities in original or the adjudicating authority is that salt of precious metal is capable of being marketable

only after it is refined. The learned counsel for the petitioner submits that there is no material on record to show that the goods in the form of slurry is marketable.

3. Per contra, the learned counsel appearing for the revenue while countering this argument tried to rely on the finding recorded by the adjudicating authority referred to hereinabove. Having heard the rival parties and looking to the prima facie case made out by the petitioner, we think that the interest of justice would be met by modifying the order of the Tribunal by directing the petitioner to furnish bank guarantee in the sum of Rs.1.25 crores instead of depositing in cash.

4. Petitioner undertakes to furnish the said bank guarantee to the satisfaction of the Commissioner of Central Excise, Mumbai within a period of 3 weeks from today. The statement made is taken on record.

5. The Tribunal to dispose of the appeal as expeditiously is possible.

6. In this view of the matter, petition is disposed of accordingly. Rule is made absolute in terms of the above order with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)